

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHIRLEY HORN, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

HI-CRUSH PARTNERS LP, ROBERT E.  
RASMUS, JAMES M. WHIPKEY, LAURA  
C. FULTON, JEFFRIES V. ALSTON, III,  
ROBERT L. CABES, JR., JOHN R. HUFF,  
TREVOR M. TURBIDY, STEVEN A.  
WEBSTER, BARCLAYS CAPITAL INC.,  
MORGAN STANLEY & CO. LLC, CREDIT  
SUISSE SECURITIES (USA) LLC, UBS  
SECURITIES LLC, RAYMOND JAMES &  
ASSOCIATES, INC., RBC CAPITAL  
MARKETS, LLC, and ROBERT W. BAIRD  
& CO. INCORPORATED,

Defendants.

DOUGLAS GOODHART, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

HI-CRUSH PARTNERS LP, ROBERT E.  
RASMUS, JAMES M. WHIPKEY, LAURA  
C. FULTON, JEFFRIES V. ALSTON, III,  
ROBERT L. CABES, JR., JOHN R. HUFF,  
TREVOR M. TURBIDY, STEVEN A.  
WEBSTER, BARCLAYS CAPITAL INC.,  
MORGAN STANLEY & CO. LLC, CREDIT  
SUISSE SECURITIES (USA) LLC, UBS  
SECURITIES LLC, RAYMOND JAMES &  
ASSOCIATES, INC., RBC CAPITAL  
MARKETS, LLC, and ROBERT W. BAIRD  
& CO. INCORPORATED,

Defendants.

Civil Action No. 12-CV-8557

RESPONSE TO ORDER TO SHOW CAUSE

MEMO ENDORSED

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DATE FILED: 12/7/12

*Pebeed*  
*The PS&RA contemplated*  
*action filed by different lawyers*  
*of different plaintiffs - not what we have here*  
*There with*  
*when the situation contemplated by him, where*  
*only we lawsuit. I will follow myself*

*12/7/12*

*My point is simple.*

*The second action was*  
*filed for PS&RA purposes*  
*only, by the same lawyer. It*  
*represents an abuse of process.*

*I do not need to appoint a "lead plaintiff"*  
*if the 2 actions are consolidated for all*  
*purposes. All you have done is make*  
*Chick in the unnecessary*  
*work*

Plaintiffs Shirley Horn ("Horn) and Douglas Goodhart ("Goodhart", collectively "Plaintiffs") hereby respond to the Court's Order dated December 5, 2012 ("Order"), requiring Plaintiffs to Show Cause, and in support thereof, respectfully state as follows:

The Court's Order directs that Plaintiffs show cause why: (i) the captions in the above-noted actions should not be combined; and (ii) the low-numbered Goodhart action should not be dismissed.

While Plaintiffs Horn and Goodhart agree the above-noted actions involve identical questions of law and fact and should be consolidated for all purposes (*see* Fed. R. Civ. P. 42(a)), Plaintiffs respectfully submit that dismissal of the low-numbered *Goodhart* action is unnecessary.<sup>1</sup> Regardless of whether the second, low-numbered *Goodhart* action had ever been filed, the lead plaintiff provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA") govern the first-filed *Horn* action and require the appointment of a lead plaintiff, as those provisions expressly govern "*each* private action arising under [the Securities Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure." 15 U.S.C. §77z-1(a)(1); *see also* 15 U.S.C. §77z-1(a)(3)(B)(i). Pursuant to 15 U.S.C. §77z-1(a)(3)(A)(i)(II), any motion for appointment of lead plaintiff must be filed by January 22, 2013.<sup>2</sup> And while the PSLRA directs that "[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter

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<sup>1</sup> To be sure, while the Order correctly notes that both Plaintiffs are represented herein by Robbins Geller Rudman & Dowd LLP, Plaintiff Shirley Horn is additionally represented by Jack Fruchter of Abraham, Fruchter & Twersky, LLP, whereas Plaintiff Douglas Goodhart is additionally represented by Frank A. Bottini of Bottini & Bottini, Inc.

<sup>2</sup> While 60 days from November 21, 2012 (the date of the PSLRA notice) is Sunday, January 20, 2013, the deadline for filing is not until January 22, 2013 since January 21, 2013 is Martin Luther King Jr. Day, a legal holiday and the Court is closed. *See* Fed. R. Civ. P. 6(a)(1)(C); *see also In re Crayfish Co. Sec. Litig.*, 00 Civ. 6766 (DAB), 2002 U.S. Dist. LEXIS 10134, at \*8-\*9 (S.D.N.Y. June 6, 2002) (granting reconsideration where investor filed motion to be lead plaintiff on day after legal holiday).

has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not [appoint a lead plaintiff] until *after* the decision on the motion to consolidate is rendered,” courts, including this one, apply the PSLRA’s lead plaintiff provisions and appoint a lead plaintiff even where only a single securities class action has been filed. 15 U.S.C. §77z-1(a)(3)(B)(ii); *see eg. Lin v. Interactive Brokers Group, Inc.*, 574 F. Supp. 2d 408, 413 (S.D.N.Y. 2008) (J. McMahon) (“...before the Court ruled on Defendant’s Motion for an Undertaking, the Motion to Appoint Seow Lin as Lead Plaintiff and to Appoint Abraham Fruchter & Twersky LLP as Lead Counsel was filed....There being no competition for the honor of being Lead Plaintiff or Lead Counsel, I granted both motions....”).

In order to facilitate the consolidation of the two above-noted actions to a single action forthwith, Plaintiffs intend to contact counsel for defendants after they appear and will submit a stipulation or unopposed motion requesting such relief.

DATED: December 7, 2012

Respectfully submitted,

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SAMUEL H. RUDMAN  
DAVID A. ROSENFELD

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/s/ Samuel H. Rudman  
SAMUEL H. RUDMAN

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, Samuel Rudman, hereby certify that on December 7, 2012, I caused a true and correct copy of the attached:

RESPONSE TO ORDER TO SHOW CAUSE

to be served electronically on all counsel registered for electronic service for this case.

/s/ Samuel H. Rudman  
Samuel H. Rudman